

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	Docket 01-0539
Implementation of Section 13-712(g)	:	
of the Public Utilities Act	:	

TESTIMONY OF DANIEL MELDAZIS

On behalf of

FOCAL COMMUNICATIONS CORPORATION
OF ILLINOIS

FOCAL EXHIBIT 1.0

DATED: June 17, 2002

OFFICIAL FILE

I.C.C. DOCKET NO. 01-0539

Focal Exhibit No. 1.0

Witness _____

Date 7/23/02 Reporter bc

1 1. Q: PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS
2 FOR THE RECORD.

3
4 A: My name is Daniel Meldazis and my title is Senior Manager --Regulatory
5 Affairs for Focal Communications Corporation ("Focal"). My business
6 address is 200 North LaSalle Street, Suite 1100, Chicago, IL 60601.

7
8 2. Q: PLEASE BRIEFLY DESCRIBE YOUR BACKGROUND AND
9 EXPERIENCE.

10
11 A: In 1992, I received an associate's degree in criminal justice from
12 Moraine Valley Community College. In 1993, I became a certified
13 paralegal in civil litigation from the Professional Career Development
14 Institute. In 1994, I received a bachelor's degree in political science from
15 Southern Illinois University. I have been working towards a master's
16 degree in international relations from Governors State University.
17 In 1996, I joined MFS Communications in its Central Region Regulatory
18 Department analyzing ILEC tariffs and researching telecommunications
19 issues. In 1997, I transferred to MFS/Worldcom Network Services as a
20 network provisioner, Central Region, where I was responsible for
21 provisioning private line circuits between MFS/Worldcom and Ameritech,
22 Sprint, Bell South and Southwestern Bell. I joined Focal in October of
23 1997 as manager of regulatory affairs. I was promoted to senior manager
24 in 1999.

28 3. Q: WHAT ARE YOUR RESPONSIBILITIES AT FOCAL?
29

30 A: I am responsible for Focal's day-to-day regulatory compliance at both the
31 state and federal levels, including tariff administration. I analyze
32 regulatory issues and provide advice and assistance to Focal's customer
33 care, finance, billing, and marketing and sales departments.
34

35 4. Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?
36

37 A: My testimony will address Section 731.900 of Staff's Proposed Rule. It is
38 found in ICC Staff Ex. 1.0 (McClerren) Supplement to Attachment 1.1.

39 5 Q: PLEASE SUMMARIZE STAFF'S PROPOSAL.
40

41 A: Staff's proposed Section 731.900 would prohibit a carrier that provides
42 wholesale service from terminating such service except upon 35 days prior
43 written notice to the Commission and the requesting carrier.
44

45 6. Q: WHAT IS FOCAL'S POSITION REGARDING STAFF'S PROPOSAL?
46

47 A: Focal strongly supports Staff's proposal with one modification. Focal
48 urges the Commission to increase the required period of advance
49 notification from 35 days to 40 days.
50

51 7. Q: WHY IS STAFF'S PROPOSED SECTION 731.900 NECESSARY AND
52 APPROPRIATE?
53

54 A: In order to provide services to its customers, most competitive local
55 exchange carriers ("CLECs"), including Focal, rely at least in part on
56 services and facilities provided by other carriers. The facilities can range
57 from high capacity interoffice trunks leased under nationwide service
58 agreements to unbundled loops to specific customers purchased under a
59 state tariff. It is generally well understood that most CLECs are highly
60 dependent upon facilities provided by incumbent local exchange carriers.
61 It may not be fully recognized that many CLECs often rely upon facilities
62 provided by other CLECs. As a result of this dependence on other carriers,
63 if service to end-users is to be maintained, it is essential that all underlying
64 facilities involved in provisioning the service to an end-user continue to
65 stay up and running. Nevertheless, it is a business reality that a carrier that
66 provides critical underlying facilities may seek to terminate, discontinue or
67 abandon service to another carrier. It may do so for a variety of reasons
68 including, but not limited to, the expiration of a contract or interconnection
69 agreement, a withdrawal from a particular service area or line of business,
70 a change of law, a bankruptcy, or as a result of a billing dispute. I believe
71 that Staff's proposed rule is intended to ensure that the requesting carrier,
72 and the Commission, has adequate advance notice of a possible
73 termination of service so that they may take whatever actions are necessary
74 to protect service to end-users. If there is inadequate advance notice,
75 obviously, telephone service to completely innocent and probably
76 unsuspecting end-user customers could be abruptly terminated.

77

78 8. Q: HAS FOCAL EVER EXPERIENCED A POTENTIAL SERVICE
79 TERMINATION BY A WHOLESALE CARRIER SUCH AS YOU
80 DESCRIBE?

81

82 A: Yes, quite recently, and it is my understanding that the incident Focal
83 experienced is at least one reason that Staff has proposed Section 731.900.

84

85 9. Q: PLEASE BRIEFLY DESCRIBE THE INCIDENT.

86

87 A: First, I want to stress that any issue that may remain in dispute between
88 Focal and the other carrier is not the subject of any current or anticipated
89 litigation before the Illinois Commerce Commission. I am providing a
90 description of the incident merely to provide the Commission with a real-
91 world context in which to evaluate Staff's proposed rule.

92 Focal provides services to certain end-users in part through facilities
93 leased from another carrier, a CLEC that I will call "Carrier X". The
94 services are provided in five states, including Illinois, under a national
95 service agreement. Focal and Carrier X had a billing dispute centered upon
96 the volume discounts applicable under the agreement. In accordance with
97 the terms of the agreement, Focal withheld the amounts in dispute and
98 remitted the undisputed amounts to Carrier X. Under the Billing Dispute
99 section of the agreement, the carriers are obliged, for a specified period of

100 time, to enter into negotiations at various levels of escalation within the
101 two companies. If the carriers are unable to negotiate a settlement of the
102 dispute, then the matter is to be submitted to an independent arbitration
103 service. In the midst of the negotiation and escalation period, and
104 completely bypassing the arbitration requirement, Carrier X, which was
105 experiencing severe financial difficulties at the time, sent a letter to Focal
106 on the Wednesday before a three-day holiday weekend. Carrier X
107 demanded payment of all disputed amounts in full by the following Friday
108 or else the services would be terminated. If the services were terminated
109 numerous Focal customers would have lost their entire telephone service.

110
111 10: Q: WHAT WAS FOCAL'S RESPONSE TO CARRIER X's ULTIMATUM?

112
113 A: Focal viewed Carrier X's actions as completely contrary to the terms of the
114 agreement as well as a number of state and federal laws and regulations
115 governing service terminations. Focal contacted the Staff of the Illinois
116 and Texas Commissions because Focal had customers in those states that
117 would unavoidably lose telephone service if Carrier X carried out its
118 threat. Focal also petitioned the Circuit Court of Cook County for a
119 temporary restraining order to prohibit Carrier X from terminating the
120 services.

121
122 11. Q: HOW WAS THE MATTER EVENTUALLY RESOLVED?

123

124 A: The Texas and Illinois Staff discussed the matter with both carriers to
125 gather information and monitor the situation. Mr. Gene Beyer, Director of
126 the Telecommunications Division of the Illinois Commerce Commission,
127 sent a letter to both carriers that stressed Staff's neutrality in the
128 underlying dispute; but emphasized that Staff was extremely concerned
129 that service to end-users not be disrupted. Mr. Beyer stated that he
130 expected both carriers to comply with applicable provisions of the Public
131 Utilities Act and Commission rules with respect to providing customers
132 with advance notice of a service termination. Focal views the efforts of the
133 Illinois and Texas Commission Staffs, and Mr. Beyer's letter in particular,
134 as instrumental in leading to the eventual Agreed Order entered by the
135 Circuit Court of Cook County. Carrier X has agreed not to terminate
136 services to Focal and the underlying billing dispute has been submitted to
137 an arbitration service.

138

139 12. Q: IF STAFF'S PROPOSED RULE HAD BEEN IN EFFECT, WOULD IT
140 HAVE BEEN USEFUL IN THE CARRIER X SITUATION?

141

142 A: Yes. Assuming Carrier X complied with the rule, Focal would have had 35
143 days, not three days, in which to negotiate with Carrier X or to try to make
144 alternative arrangements for serving Focal's end-user customers. The Staff
145 also would have had significantly more time to gather information and

146 mediate the dispute or perhaps take other formal action.

147

148 13. Q: DOES STAFF'S PROPOSED RULE ADEQUATELY PROTECT
149 CONSUMERS IN THE WHOLESALE SERVICE TERMINATION
150 SITUATIONS YOU'VE DISCUSSED?

151

152 A: Staff's rule does not specifically address a carrier's obligation to provide
153 advance notice of termination to the end-user customer. This proceeding is
154 intended to establish a rule governing carrier-to-carrier conduct and
155 service, so it is understandable that Staff's proposed rule does not address
156 carrier to customer notice requirements. Nevertheless, there is an
157 ambiguity, or at least an issue of interpretation, regarding the existing laws
158 and regulations on carrier to customer notice. If this issue is not resolved it
159 is quite likely that a situation will arise in which consumers find their
160 telephone service terminated with little advance warning.

161

162 14. Q: PLEASE EXPLAIN.

163

164 A: Although I am not an attorney, in my regulatory compliance role at Focal I
165 need to be generally familiar with the various state laws and regulations
166 covering service termination. There appears to be a difference of
167 interpretation regarding Section 13-406 of the Public Utilities Act. It
168 states:

169 No telecommunications carrier offering or providing
170 competitive telecommunications service shall
171 discontinue or abandon such service once initiated
172 except upon 30 days advance notice to the
173 Commission and affected customers. (220 ILCS 5/13-406)

174 The law has a similar notice requirement for carriers providing non-
175 competitive services.

176 It is my understanding that some carriers believe that this notice
177 requirement applies only when a carrier plans to exit the market. In other
178 words, when it is no longer providing any competitive telecommunications
179 services at all. Under this view, Section 13-406 would not apply to either
180 carrier in Focal's incident with Carrier X.

181 Another view is that the provision applies whenever any particular
182 customer faces a discontinuance of a competitive service. Under that view
183 Carrier X would have been required to provide Focal 30 days advance
184 notice of termination. In addition, Focal would have been required to
185 provide its customers with 30 days advance notice of an impending service
186 termination.

187

188 15. Q: WHY IS THIS RELEVANT TO CONSIDERATION OF STAFF'S
189 PROPOSED SECTION 731.900?

190

191 A: I believe that Staff favors a broader reading of the notice requirement of

214 customers, Focal, competition or the reputation of the telecommunications
215 industry.

216 The Staff's proposed five-day window is inadequate. It is highly unlikely
217 that a state commission can or will act to prevent a termination of service
218 within five days of being notified. Without such action the end-user notice
219 requirement of Section 13-406 might apply. Realistically, a carrier's only
220 option in an emergency situation, such as the Carrier X incident, is to seek
221 a temporary restraining order from a court. It is my understanding that
222 courts do not freely grant temporary restraining orders; a petitioner must
223 meet a high standard in order to obtain one. It was particularly challenging
224 for Focal during the Carrier X incident because we needed to find a judge
225 willing to hear our petition on a Friday before a three day holiday
226 weekend. Five days is simply an inadequate period of time to seek legal
227 redress, particularly if weekends and holidays are involved.

228

229 17. Q: IS THERE ANY OTHER REASON THE FIVE-DAY WINDOW IS
230 INADEQUATE?

231

232 A: Yes. Telephone services to a particular end-user may be provided through
233 facilities and services provided by a number of carriers under a variety of
234 legal arrangements including contracts and tariffs. It is not always an easy
235 matter to identify which customers might lose service as a result of a

236 termination of wholesale service. It would depend on an analysis of the
237 particular termination notice received. That could be very time-consuming.

238

239 18. Q: WHAT CHANGE DO YOU RECOMMEND FOR STAFF'S PROPOSED
240 SECTION 731.900?

241

242 A: The period of advance notice should be increased from 35 days to 40 days.
243 The additional five days will give the requesting carrier a more reasonable
244 period of time in which to pursue its legal remedies, identify customers
245 that would lose service as a result of a wholesale service termination and
246 prepare termination notices to customers if necessary.

247

248 19. Q: DOES THIS CONCLUDE YOUR TESTIMONY?

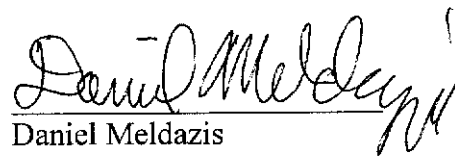
249

250 A: Yes, it does.

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

AFFIDAVIT

I, Daniel Meldazis, being duly sworn on oath state the following : I am the same Daniel Meldazis identified in Focal Exhibit 1.0, filed by means of e-Docket on July 5, 2002; I have caused Focal Exhibit 1.0, to be prepared and am familiar with the contents thereof; and Focal Exhibit 1.0, is true and correct to the best of my knowledge and belief as of the date of this Affidavit.
Further affiant sayeth not.


Daniel Meldazis

SUBSCRIBED AND SWORN to before me
this 23RD day of July, 2002.


NOTARY PUBLIC

